

**FINDING OF EMERGENCY  
FOR  
PROPOSED BUILDING STANDARDS BY THE  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF CODES AND STANDARDS (HCD)**

**REGARDING THE PROPOSED AMENDMENTS TO  
TITLE 25, CALIFORNIA CODE OF REGULATIONS, CHAPTER 3, SUBCHAPTER 2  
ARTICLE 2.3, SECTIONS 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4214 AND 4216**

**ON THE SUBJECT OF IGNITION RESISTANT CONSTRUCTION SYSTEMS FOR  
MANUFACTURED HOMES, MOBILEHOMES, MULTIFAMILY MANUFACTURED  
HOMES AND COMMERCIAL MODULARS INSTALLED WITHIN WILDLAND-URBAN  
INTERFACE AREAS**

HCD proposes to adopt the above-noted new article 2.3 and regulation sections into CCR Title 25, Chapter 3, Subchapter 2. Government Code 11346.1 requires that the finding of emergency include a written statement which contains the information required by paragraphs (2) through (6), inclusive, of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

**FINDING OF EMERGENCY**

The following information is evidence that adoption by emergency of the new Article 2.3, as proposed by HCD, is necessary for the immediate preservation of the public peace, health and safety or general welfare of the public.

Chapter 688 of the Statutes of 2003 (Assembly Bill 1216 - Vargas) became effective January 1, 2004, amending Section 13108.5 of the Health and Safety Code relating to building construction in Wildland-Urban Interface Fire Areas. On September 20, 2005, the California Building Standards Commission approved the Office of the State Fire Marshal's emergency regulations (building standards) amending the California Code of Regulations (CCR), Title 24, Part 2, California Building Code (CBC), adding Chapter 7A - Materials and Construction Methods for Exterior Wildfire Exposure (Chapter 7A). These building standards were adopted in response to severe fire damage and loss of life sustained during wildfires in Southern California.

Between September, 2005, and January, 2008, there was neither need nor ability for HCD to impose special fire safety construction standards on manufactured homes, because the U.S. Department of Housing and Urban Development (HUD) generally preempts the area of manufactured home construction standards. As discussed below, HUD changed its position, in January, 2008, allowing HCD to develop and enact the same Chapter 7A standards adopted by the State Fire Marshal throughout the state. This serves the dual purposes of enhancing resident and home safety in fire hazard zones while maintaining a statewide standard to allow cost-effective factory construction processes statewide.

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The 2008 fire season has arrived with a significant threat to persons and property in urban areas near wildlands and in rural areas. In addition, State Fire Marshal mapping of specified fire hazard areas was finalized in July, 2008, allowing consumers, dealers, and manufacturers to determine what areas require enhanced Chapter 7A fire standards. Without clarity as to the existence and preemptive nature of the HCD standards (Chapter 7A), either local governments may prevent the installation of affordable and safe manufactured housing and commercial modulars in mobilehome parks and on private property due to a belief that they can impose their own local fire hazard rules and/or some homes and modulars will be installed without adequate fire protection.

### **Rationale for Emergency**

- With the 2008 fire season here, it is a matter of emergency that construction standards be placed into effect to provide protection of manufactured homes, mobilehomes, multifamily manufactured homes and commercial modulars being installed in areas designated as Fire Hazard Severity Zones. Failure to implement these standards as an emergency will leave these types of structures and the occupants vulnerable to the hazard posed by wildfire. At the current time, 350 manufactured homes and 300 commercial modulars are sold and installed monthly in California, many of which are in high fire hazard zones.
- The installation of a manufactured home, mobilehome, multifamily manufactured home or commercial modular without fire hazard protection not only impacts the homes' and modulars' residents and property. In addition, it can act as a catalyst to spread a fire from an external source to other nearby homes and property, and requires fire fighters to dilute their fire fighting activity to unnecessarily protect property without adequate fire prevention standards.
- Without statewide regulations to preempt city, county, and city and county enforcement of locally-adopted Wildland-Urban Interface adopted ordinances, manufacturers of manufactured housing, multifamily manufactured homes, or commercial modulars could be required to construct structures to local requirements even though the authority to impose these local requirements on manufactured homes is questionable. There are 58 counties and nearly 600 cities with building departments, which would mean that manufacturers have been subject to manufacturing homes and modulars to any number of standards, instead of one state or federal standard. These businesses and associated enterprises would be severely impacted beginning July 1, 2008, by the inability to build, sell, and lease structures which could be located in one local jurisdiction but not another. These proposed regulations immediately would standardize the construction requirements.
- About 350 manufactured homes and about 300 commercial modulars are sold monthly in California, based on 2007 statistics, many of which are sited in high fire hazard areas. These are financed in advance of construction and since there are no clear regulatory requirements in place on July 1, when final State Fire Marshall

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maps were published, the attempted imposition of local requirements will delay installation and use, leaving consumers and small businesses making monthly payments for residential and commercial products they cannot use. This delay will spill over to additional consumers and businesses seeking these products on and after July 1, 2008.

### Factors Preventing the Development of Non-emergency Regulations

- The U.S. Department of Housing and Urban Development's (HUD) historically has precluded state or local building standards from applying to manufactured homes. In approximately August, 2007, HUD formally communicated to HCD that California's adopted Wildland-Urban Interface standards could not be applied to manufactured homes since the field of "fire protection" was preempted by federally adopted standards; however, in January, 2008, HUD rescinded that decision and determined that standards could be developed by California and applied to manufactured homes.

HCD was not able to initiate rule-making for commercial modulars and multifamily manufactured homes until HUD agreed to state standards for manufactured homes. The same factories construct manufactured homes, multifamily manufactured homes and commercial modulars, and a series of conflicting building standards would have created confusion and probably construction errors in those factories.

- Fire Hazard Severity Zone maps for Local Responsibility areas were not available from the Office of the State Fire Marshal until early 2008, with final maps being approved and fully available in July, 2008. Without these maps, manufacturers of manufactured homes, multifamily manufactured homes, or commercial modulars could not properly build structures to comply since there was no viable means to determine whether compliance was mandated. Manufacturers would have to risk constructing structures at a manufacturing facility in advance of the map availability, and then be found in violation upon delivery to the site for installation if the standards were incorrect or were not required.

### **BACKGROUND**

On September 2, 2003, the California Legislature approved Assembly Bill 1216, Fire Safety Regulations and the Governor signed it as Chapter 688, Statutes of 2003. The measure was supported by fire fighters, insurance advocates, and environmental groups. One month after the Governor signed AB 1216, California was under siege by the most devastating Wildland fire disaster in the state's history. The facts surrounding the disaster included 24 people, including one fire fighter dying, 750,043 acres burned, and 3,710 homes destroyed. More recently, the October, 2007 Southern California wildfires resulted in 94 casualties—including 9 who died—and destroyed over 1,500 homes, including almost 220 manufactured homes in parks in high fire hazard areas. In the aftermath of the fires, the loss of stabilizing vegetation and torrential rain storms created horrendous

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mudslides during flash floods in an area of San Bernardino County; sixteen people perished.

The number of homes destroyed and the frequency of these fires is increasing. Recent serious conflagrations include the following:

- 484 homes - Los Angeles 1961
- 325 homes – San Bernardino 1980
- 641 homes - Santa Barbara 1990
- 3,403 homes – Oakland 1991
- 400 homes – Laguna Beach 1993
- 2,232 homes – San Diego (Cedar Fire only) 2003
- 1,500 homes—Southern California 2007

“The Story,” California Fire Siege 2003 is part of the basis of the Finding of Emergency for the emergency regulations proposed by HCD. (This story is available upon request)

### **AUTHORITY AND REFERENCE**

HCD proposes to adopt these regulations under the authority granted by Health and Safety Code (HSC) Sections 18015, 18020(a), 18028(a), 18029, and 18029.5.

The purpose of these regulations is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 13143, 13108.5(a), 18015, 18020(a), 18028(a), 18029, 18029.5, and 18030.5, and Government Code Section 51189 relating to building materials and construction methods used in Wildland-Urban Interface Fire Area, as well as California Code of Regulations (CCR), Title 24, Part 2, Chapter 7A..

### **STATEMENT OF SPECIFIC PURPOSE AND RATIONALE**

Pursuant to Chapter 668, Statutes of 2003 (AB 1216), the California Office of the State Fire Marshal (OSFM) amended the 2007 California Building Code (CBC), Title 24, Part 2, adding chapter 7A and providing new Wildland-Urban Interface (WUI) Fire Area building standards to establish minimum standards for exterior materials and material assemblies and provide a reasonable level of exterior wildfire exposure protection for new buildings constructed in such areas to mitigate losses resulting from California’s repeating cycle of wildland fire disasters.

The addition of the WUI standards into the 2007 CBC, however, did not, for several reasons, automatically require that manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures comply with the new WUI standards, should these structures be installed either on private property or in a mobilehome park residing within a WUI fire area.

\* Construction standards for manufactured homes and mobilehomes (MH), multifamily manufactured homes (MFMH), and commercial modular (CM) structures are specifically exempted from the building standards requirements of the California Building Standards Code, pursuant to California Health and Safety Code section 18909(g).

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\* Construction standards for most components of manufactured homes are established by HUD with a preemptive code applicable nationwide.

\* Construction standards for mobilehomes, multifamily manufactured homes, and commercial modular structures are established by HCD and generally preempt local ordinances.

The specific purpose of this rulemaking by HCD is to comply with both the Legislature's intent and the OSFM's purpose to require adoption of ignition resistant regulations for all buildings or structures that are either site-constructed or installed in WUI fire areas as defined under those rules in order to foster fire safety and prevention of fire spreading to other structures. This rulemaking by HCD, in coordination with the OSFM, establishes a systematic approach to reducing structure loss in a large and destructive fire and to protect life and property in any Wildland-Urban Interface Area while not interfering with the preemptive HUD or statewide standards applicable to manufactured homes, mobilehomes, multifamily manufactured homes, or commercial modulars.

HCD proposes to adopt by reference in Title 25, CCR, the OSFM building standards adopted by the CBSC in Chapter 7A and apply them to MH, MFMH and CM construction. This will provide minimum standards for the design, materials and construction methods for roofs, roof coverings, roof assemblies, attic eave and cornice vents, and exterior wall coverings for MH, MFMH, and CM structures built or installed in a Wildland-Urban Interface Fire Area. These construction methods are proposed in order to resist the intrusion of flame or burning embers projected by a vegetation fire on or into MH, MFMH and CM structures in the same manner as conventionally constructed structures.

The proposed regulations adopt by reference the California Building Code, Part 2, (CBC) Chapter 7A. These ignition resistant construction requirements previously applied only to site-constructed buildings in a State Regulated Area (SRA) as of January 1, 2008. Effective July 1, 2008, in Local Regulated Areas (LRA), the provisions of Chapter 7A are effective and would, after local adoption by local ordinance, also include MH, MFMH and CM structures.

An ignition resistant construction system installed as required by Chapter 7A of the CBC is designed to resist ignition from flame or embers and affords occupants early evacuation of the home or structure. It also provides resistance to penetration of the structure by fire or embers. The adoption by reference of Chapter 7A of the CBC into Title 25 CCR regulations, as well as the requirements for Department approved third-party approval of plans and third-party inspections in the manufacturing facility, will provide HCD licensed manufacturers and dealers; owners of MH, MFMH and CM; and local jurisdictions with reasonable assurance that ignition resistant construction systems installed in these structures will meet the minimum requirements imposed on communities by Chapter 7A, CBC.

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### Preemptive Standards

Health and Safety Code section 18015 provides that the Department's regulations supersede the provisions of any local ordinance, and section 18030.5 exempts a manufactured home, mobilehome, multifamily manufactured home and commercial modular structure from the requirements of any local ordinance that conflicts with standards adopted by the Department. In accordance with these laws, the ignition resistant construction standards proposed by the Department will have statewide application. The preemptive nature of the standards will provide all interested parties with construction standards that maintain the integrity of the structures and will provide a means of consistency throughout the state.

## **OTHER CONSIDERATIONS, BACKGROUND**

### Federal and State Preemptive Construction and Safety Standards

The preemption of state and local standards by the federal construction and safety standards<sup>1</sup> for manufactured homes effective June 15, 1976, resulted in the production of affordable, transportable structures that are installed as single-family dwelling units throughout the country. These construction requirements accommodate assembly-line manufacturing procedures, apply throughout the United States, and preempt any conflicting state or local requirements. The standards ensure an acceptable level of safety for the occupants and enable manufacturers to produce, in factories, homes for retail sale anywhere in the country. Department statutes, by reference, generally adopt the federal standards for construction of multifamily manufactured homes.

In approximately August, 2007, HUD communicated to the Office of the State Fire Marshal (OSFM) and the Department that California's adopted Wildland-Urban Interface standards could not be applied to manufactured homes since the field of "fire protection" was preempted by federally adopted standards. However, in January, 2008, HUD rescinded that decision and determined that standards could be developed by California and applied to manufactured homes.

The federal standards do not provide for the installation of an ignition resistant construction system on a manufactured home, nor do the existing Department regulations applicable to mobilehomes, multifamily manufactured housing, or commercial modulars. The lack of a construction standard applicable to these structures leaves the structures vulnerable without the installation of an ignition resistant construction system. Because there are no preemptive fire resistive standards, local building departments, fire departments, or fire districts in California believe that they can adopt local ordinances requiring additional or more restrictive ignition resistant construction systems in MH, MFMH and CM structures.

### Transportable Nature

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<sup>1</sup> Title 24, Code of Federal Regulations (CFR), Parts 3280 and 3282; H&SC §18007.

The transportable nature of both the manufactured residential structures and the commercial modular structures contributes to the need for preemptive statewide standards for the installation of ignition resistant construction systems. Because a manufactured home is constructed in a manufacturing facility in California or another state under federal construction standards and moved to a distant installation site, the persons installing the home and the enforcement agency inspecting both the installation of the home and the on-site assembly of the ignition resistant construction system during the installation of the home cannot readily communicate directly with the manufacturer about the system's specifications. The same conundrum exists with regard to the other covered manufactured structures. Compliance with one clear set of standards, the proposed regulations, adopting Chapter 7A of the CBC, provides that consistency.

When an ignition resistant construction system is installed following the shipment of the MH, MFMH or CM from the manufacturing facility, rather than during construction, compliance with preemptive state standards provides assurances for the current and future owners. Since MH, MUMH and CM structures are transportable, standardized construction methods allow current or future owners to move the structure to a new location distant from the local agency that initially approved the installation of the ignition resistant construction system. A person inspecting the installation of these buildings at the new site can rely on compliance with a preemptive state standard to ensure that the system is adequate to meet local fire protection requirements.

#### Duplication of Oversight

The administration and inspection requirements imposed by local ordinances are not uniform and often would duplicate work performed by HCD approved third-party enforcement agencies. Examples of inconsistent, duplicative requirements that could be imposed by local jurisdictions in California upon owners of manufactured homes and multifamily manufactured homes if there were no state standards include the following:

- ◆ A local fire or inspection agency may require a homeowner to prove all exterior materials are suitable and properly installed, requiring partial destruction, disassembly of roof components or siding installed at the factory. The proposed regulations would require the manufacturer to post a certification label that not only certifies compliance with the proposed 25 CCR construction standards, but also lists the types of materials that were installed on the exterior of the structure. Additionally, for preexisting structures altered to meet the WUI requirements, the fire resistive material packaging and product installation instructions must be retained by the installer and provided to the inspector at the time of inspection.
- ◆ A local building department or fire agency could require plans and calculations and review of the ignition resistant system before the manufactured home is permitted to be delivered to the construction site. This type of local requirement would duplicate the efforts of HCD-approved third-party plan review agencies, needlessly increase costs to the home buyer, and cause needless reconstruction of structures.

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## **INFORMATIVE DIGEST**

### **Summary of Existing Laws**

#### **Federal Provisions**

24 Code of Federal Regulations (CFR) §3282.11, and 42 U.S.C. Section 5403(d) prohibits any state or political subdivision of a state from establishing a construction standard for manufactured homes that is not identical to the corresponding federal standard, if a federal standard exists. Since federal construction standards for manufactured homes in 24 CFR Part 3280 do not expressly provide standards for installation of an ignition resistant construction system for a manufactured home, California proposes to establish installation requirements for ignition resistant construction system in manufactured homes under authority provided by the Health and Safety Code.<sup>2</sup>

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**HSC Section 18015** – Existing law makes Part 2 (commencing with section 18000) of the Health and Safety Code applicable to all parts of the state and supersedes conflicting local ordinances. It authorizes HCD to promulgate regulations to interpret and make specific the provisions of this part relating to construction and other related or specifically enumerated activities. Under this authority, HCD proposes to adopt installation standards for ignition resistant construction system installed in new or existing manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures.

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**HSC Section 18020(a)** – Existing law authorizes HCD to enforce the provisions of Part 2 (commencing with section 18000) of the Health and Safety Code and rules and regulations adopted pursuant to that part, except for recreational vehicle standards covered by HSC 18027.3 and manufactured home standards covered by 42 U.S.C. Section 5401 et seq. of the National Manufactured Housing Construction and Safety Standards Act (NMHCSSA) of 1974. Under this authority, HCD proposes to adopt installation standards for ignition resistant construction system installed in new or existing manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures.

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**HSC Section 18028(a)** – Existing law authorizes HCD to adopt regulations regarding the construction of commercial modulars and special purpose commercial modulars, excepting mobile food facilities subject to Article 11, commencing with Section 114250 of Chapter 4 of Part 7 of Division 104, and multifamily manufactured homes, manufactured

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<sup>2</sup> In a letter dated January 31, 2008, from William W. Matchneer III, Associate Deputy Assistant Secretary of the federal Regulatory Affairs and Manufactured Housing Mr. Matchneer states, “*Exterior fire resistance is an element of performance that is not addressed by the Federal Manufactured Home Construction and Safety Standards, 24 CFR 3280. Accordingly we would not consider the application of the WUI standards to manufactured housing to be a violation of the preemption provisions of the National Manufactured Housing Construction and Safety Standards Act, 42 USC 5403(d)*”

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homes, and mobilehomes not subject to the NMHCSSA. HCD is authorized to determine whether the proposed regulations are reasonably necessary to protect the health and safety of the occupants and the public. Under this authority, HCD proposes to adopt installation standards for ignition resistant construction system installed in new or existing manufactured homes, mobilehomes, multifamily manufactured homes and commercial modular structures.

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**HSC Section 18029** – Existing law authorizes HCD to adopt regulations governing the alteration or conversion of fire safety systems, installations, and equipment in manufactured homes, mobilehomes, multifamily manufactured homes, commercial modulars, and special purpose commercial modulars. Under this authority, HCD proposes to adopt installation standards for ignition resistant construction system installed in new or existing manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures.

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**HSC Section 18029.5** – Existing law authorizes HCD to adopt regulations that are reasonably consistent with generally recognized fire protection standards and that govern conditions relating to the protection of life against fire in a manufactured home, mobilehome, multifamily manufactured homes and commercial modular.<sup>3</sup> Under this authority, HCD proposes to adopt the installation standards for ignition resistant construction system in newly built manufactured homes and multifamily manufactured homes and commercial modulars.<sup>4</sup>

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**HSC Section 18030.5** – Existing law exempts manufactured homes, mobilehomes, multifamily manufactured homes, commercial modulars, and special purpose commercial modulars from compliance with local ordinances prescribing requirements in conflict with the standards prescribed by Chapter 4 (commencing with section 18025), of Part 2 of Division 13 of the Health and Safety Code and adopted regulations.

### **Summary of Existing Regulations**

Uniform statewide standards were developed to assure owners, occupants, and users of manufactured homes, mobilehomes, multifamily manufactured homes, commercial modulars, and special purpose commercial modulars protection from risks to their health and safety, and property. For manufactured homes subject to preemptive HUD standards, this generally includes just the HUD standards; however, HCD also has adopted preemptive fire sprinkler standards for HUD-code homes (article 2, commencing with section 4300) and various installation requirements. Current conditions now require

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<sup>3</sup> HSC §18029.5 states in-part: “The department may adopt rules and regulations...governing conditions relating to the prevention of fire or for the protection of life and property against fire in manufactured homes, mobilehomes, special purpose commercial coaches... commercial coaches....”

<sup>4</sup> HSC §18008.7 defines “multifamily manufactured home” and requires that, “...all provision of law that apply to manufactured homes shall apply equally to multifamily manufactured homes....”.

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additions to these regulations to address fire safety of residents and the general public in specified wildfire areas.

### **Summary of Sections Affected**

- The specific sections of 25CCR, Division 1, Chapter 3, Subchapter 2, to be added by this proposed action are a new Article 2.3 new sections 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4214, and 4216.

### **Summary of Effect of Proposed Regulatory Action**

The purpose of these proposed regulations is to establish requirements for the installation of ignition resistant construction system for manufactured homes, mobilehomes, multifamily manufactured homes and commercial modulars intended to be placed in areas designated as Fire Hazard Severity Zones, including both substantive and procedural requirements.

Those sections within Title 25, California Code of Regulations, affected by this emergency rulemaking (see "Summary of Sections Affected," above), and the specific purpose for each requirement in these proposed regulations, is described in the Initial Statement of Reasons.

► **Article 2.3 Manufactured Home, Mobilehome, Multifamily Manufactured Home and Commercial Modular Ignition Resistant Construction System.** HCD is adding the ignition resistant construction standards in a new and separate article for the ease of the public and public agencies to find the requirements and so that all are together in one place.

#### **Section 4200. Application of Design Requirements; Preemption of Local Requirements.**

**Subsection (a).** By the addition of this subsection, a code user, and local enforcement agency will be notified that the Chapter 7A standards adopted on behalf of the State Fire Marshal in the California Building Standards Code for conventional construction also are the standards for the design, installation, and construction of the exterior of any mobilehome, manufactured home, multifamily manufactured home, or commercial modular intended to be installed in a specified Fire Hazard Severity Zone. This allows for statewide consistency as well as understanding by local inspectors and ensures that current and subsequent owners of the units understand the extent of protection.

**Subsection (b).** By the addition of this subsection, a code user will know that the design, construction, and installation standards in this article preempt any local ordinance or rule adopted by any other state or local agency for construction of buildings or structures in the fire hazard areas designated in subsection (a) with two specific conditions. This ensures that there will not be conflicting standards depending on where a unit is installed, and avoids an unnecessary burden on manufacturers. In addition, the state (OSFM) standards provide adequate protection anywhere in the state.

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**Subsection (b)(1).** This is the first exception to the rule that the HCD Article 2.3 standards for certain manufactured structures preempt in the state-established high fire hazard zones. By the addition of this subsection a code user and local enforcement agency will know that the regulations not only preempt any more restrictive rules being applied to the design, construction and installation of the specified manufactured structures proposed for installation in the fire hazard areas specified in subsection (a), but also preempt by precluding additional or more restrictive protection for other locally-established fire hazard areas. This amendment is necessary because local jurisdictions commonly seek to provide more restrictive rules for their specific areas of responsibility, and this amendment clarifies the preemptive nature of the state standards in order to avoid conflicts, inconsistencies, and unnecessary additional standards.

**Subsection (b)(2).** By the addition of this subsection, the code user will know that the other exception to the Article 2.3 standards being preemptive, as described in subsection (a), occurs for structures installed in certain locally established moderate or low fire severity areas. In those circumstances, where less restrictive standards are enacted by local governments, mobilehomes, manufactured homes, multifamily manufactured homes and commercial modular structures may be constructed to those lower or less restrictive standards established by the local enforcement agency. This is necessary to allow consumers and sellers to reduce costs where more stringent standards are not necessary.

**Subsection (c).** By the addition of this subsection, a code user will know that not all mobilehomes, manufactured homes, multifamily manufactured homes and commercial modular structures constructed in California require installation of an ignition resistant construction system. Instead, only those installed or intended to be installed in one of the listed fire areas on or after September 1, 2008, are subject to this article. This ensures that ignition resistant construction standards are not required for homes and modulars installed in areas without high fire hazards. September 1, 2008, was selected because HCD projects that this regulation package will become effective between August 15 and August 20. September 1 allows 10 days to two weeks for manufactured home and commercial modular dealers to incorporate costs and orders based on the new regulations, and for manufacturers to modify production lines to include Chapter 7A standards.

**Subsection (c)(1).** By the addition of this subsection, a code user will know that manufactured homes intended to be installed in a specified fire hazard area that were manufactured prior to the effective date of this article but after January 1, 2006, are exempt from the requirements of these regulations until September 1, 2009, but are subject to local ordinances and the State Fire Marshall regulations until the effective date of this article. This section was intended to give small businesses and persons that own existing manufactured homes time to either install the home as is, modify it to comply with this section, or sell it elsewhere. January 1, 2006, was selected because the manufactured housing industry has estimated that about 800-900 manufactured homes are current unsold inventory on dealer lots. Beginning in late 2006, manufactured housing sales began a precipitous decline due to general economic conditions, and many

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homes acquired by dealers after January 1, 2006, remain unsold but were acquired in good faith and with the intention of selling quickly. Adequate time has elapsed for the sale of homes manufactured before that date. However, even those homes must be sold as promptly as possible, either inside or outside of WUI areas. Thus, the dealers will have approximately one additional year, until September 9, 2009, to sell and install those units.

**Subsection (c)(2).** By the addition of this subsection, a code user will know that commercial modular structures intended to be installed in specified fire hazard areas for temporary commercial, professional or business use for less than one year are exempt from the requirements of this article, but are subject to local ordinances and the State Fire Marshal regulations until the effective date of this article. The one-year time period was established because most projects using transitory commercial modulares take one year or less (e.g., construction projects), and those commercial modulares are made available in any area in the state. The Department determined that it was not economically reasonable to require commercial modulares placed on a work site for less than one year to be fully ignition resistant since those units are moved from site to site so often. The one year exception is calculated to start on date of issuance of a permit to install the commercial modular structure in order to establish a uniform process, throughout the state.

**Subsection (d)(1-4).** By the addition of this subsection, the code user and local enforcement agency will know that existing manufactured homes, mobilehomes, multifamily manufactured homes, and commercial modular structures installed in a fire area are exempt from the ignition resistant construction, required by this article, unless they already have the system; they undergo exterior replacement or repairs which may be components that should be replaced by Ignition-resistant materials (e.g., older glass replaced with tempered pane glass, siding replaced by ignition-resistant siding, etc.); they involve a conversion from one type of occupancy to another (e.g., upgrade from commercial use as a commercial modular to residential use as a dormitory); or they are intended to be reinstalled at a different location within a specified fire hazard area. The code user will also learn that if exterior alterations, replacements or repairs are performed on existing structures in specified fire areas, only the exterior coverings being altered, replaced or repaired must comply with this article. This amendment mirrors the CBC, Chapter 7A standards for existing site-built structures, and is necessary to ensure that sellers, buyers, and manufacturers do not spend the costs unnecessarily

**Subsection (e).** By the addition of this subsection, a code user will know that alterations made to the exteriors coverings of new or existing manufactured structures located in fire hazard areas must be in accordance with this Article, if such alterations are intended to be or held out as an ignition resistant construction system. This direction is necessary so that consumers receive the benefits they bargain for and rely on, and to make misrepresentations subject to statutory penalties.

► **Section 4202. Definitions.** Within Article 2.3, HCD is proposing a definitions section to define commonly used terms relating to MH, CM, MFMH construction and

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installations within Wildland-Urban Interface (WUI) Areas. All of the terms cross-reference or incorporate identical terms in the State Fire Marshal's CBC Chapter 7A in order to maintain consistency statewide with regard to these standards and comply with the intent of both the Legislature and the State Fire Marshal to increase protection from wildland fires. If the State Fire Marshal believes that modifications are necessary in the future for every area of the state, the changes automatically will be applicable to the manufactured structures subject to this subchapter. This consistency also is necessary so that inspectors who inspect conventional construction can apply the same information to manufactured units.

**Subsection (a).** By the addition of this subsection, a code user will learn that a manufactured home, multifamily manufactured home and commercial modular structure each have a date of manufacture that is recorded by the manufacturer, and placed on the unit's data plate or unit identification label. The data of manufacture will be the control date utilized by local permitting agencies for the purpose of exceptions to the article.

**Subsection (b).** The term "Ignition resistant construction system", as used in this new article 2.3, is cross-referenced to the same term and standards in CBC Chapter 7A in order to enhance consistency and clarity.

**Subsections (c-d).** By the addition of these subsections, a code user and enforcement agency will know that the proposed definitions are terms used to describe different geographic WUI responsibility areas. These definitions will also inform the code user and local enforcement agency that the geographic areas are the same as those applicable to other parts of the state, as adopted by CBC, Chapter 7A, and therefore the same standards that apply to conventional homes in those areas also apply to manufactured units.

► **Section 4204. Adoption by Reference of the Provisions of the California Code of Regulations, Title 24, Part 2, Chapter 7A.** Within Article 2.3, HCD is proposing to adopt by reference the standards provided by Chapter 7A, for the specified manufactured structures installed or intended for installation in WUI areas. By addition of this subsection, a code user and enforcement agency will know that HCD is exempting certain sections that are not applicable to the manufactured structures subject to the provisions of this Article.

- CBC Chapter 7A, section 701A.3.1, is exempted from this new Article because existing HSC section 18016 already addresses alternate methods of construction for the manufactured structures subject to this Article.
- CBC Chapter 7A, section 701A.3.2.4, is exempted from this Article because vegetation clearance requirements are not a design, construction, or installation standard for the manufactured units subject to this Article and therefore section 701A.3.2.4 is not applicable to this Article..
- CBC Chapter 7A, section 702A, "Fire Protection Plan" definition is exempted from this new Article because it does not relate to a design, construction, or installation standard for the manufactured housing units subject to this Article nor may local ordinances impose those standards.

While the Office of Administrative Law generally questions the validity of prospective incorporations by reference (e.g., the proposed HCD regulations adopt a portion of CCR

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Title 24, the California Building Code, as currently in effect and as amended in the future), the situation with this incorporation by reference differs from those which are the basis of OAL's past rejections. Those are based on issues related to the limited opportunity for public participation in the decision by the promulgating agency (e.g., HCD) because another agency creates or adopts the standards being adopted by reference. The proposed HCD regulations, the regulated public affected by them, and the process for adoption of Chapter 7A clearly distinguish these regulations from those which are the basis for OAL's precedential decisions on prospective incorporation by reference.

OAL relies on decisions in *California Ass'n of Nursing Homes, Etc. v. Williams* (1970) 4 Cal.App.3d 800, 814, 84 Cal.Rptr. 590, and its internal citation, *Olive Proration etc. Com. v. Agric. etc. Com.*, 17 Cal.2d at p. 209, 109 P.2d 918. In the *Nursing Home* decision, as well as the *Olive Proration* decision, the problem was that the welfare agency was adopting regulations based on a "Schedule of Maximum Allowances" established by the Department of Finance without any hearings, any evidence, etc. and in fact were the result of "ex parte studies by staff personal" of the Department of Finance (referred to by the court as the state agency's adoption of "DOF's fiat". A similar circumstance existed in the *Olive Proration* decision, where the agency completed its hearings and then, without notice to parties, received and considered a field survey and report by the Department of Finance; the parties were not apprised that this survey was undertaken or the result of it until the commission ordered were promulgated, depriving them of opportunity to comment and rebut.

Headnote 10 in *Nursing Homes* summarizes that there is no procedural barrier prohibiting adoption by reference if supporting evidence is made available at a public hearing, an opportunity to refute is given, pro-and-con evidence is consider, etc. In the HCD/WUI regulations, proponents and opponents will have those opportunities. Already, HCD demonstrated that it has not fully "delegated" its authority to the State Fire Marshal, since it opted to not adopt certain parts of the WUI Chapter 7A regulations. Other parts might be considered for deletion as well, depending upon comments during the public input phase. However, HCD also has made full reference to the Fire Marshal's consideration and hearings on Chapter 7A: these were not adopted under the cover of darkness, as were the DOF "Schedule" and the DOF "Study" in the *Nursing Home* and *Olive Proration* decisions. If anything, builders participating in 90% of the residential construction in the state fully vetted those standards in public hearings!

Another example of the problem with prospective incorporation by reference cited by OAL involves the Regional Water Board and its attempted adoption of federal standards. Not only is there a question of illegal delegation to a federal agency—an issue not applicable in the HCD/WUI situation—but the ability to participate in and influence the development and adoption of federal regulations is far different than that accorded by OAL with respect to the development and promulgation of state regulations.

As to adoption by reference for future modifications, again the record here is totally different than that in *Nursing Homes*. In "Nursing Homes", the reference to "the incorporated material" refers to the DOF schedules created by faceless DOF staff personnel in ex parte proceedings, resulting in the nursing home industry having not

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opportunity to comment, refute, etc. In the instant situation, there are two striking differences:

1. Any changes in the OSFM Chapter 7A will occur with full public study, comment, and opportunity to rebut from residential builders throughout the state, as well as public agencies such as HCD. The adoption of building standards by the California Building Standards Commission is subject, in part, to the APA and is much like the process used with OAL-processed regulations, rather than the process used for federal regulation review and adoption.
2. Knowing that Chapter 7A will provide the template standards immediately upon adoption by HCD, the manufactured housing industry can register as “interested parties” and be provided direct notice and opportunity to participate in any further CBSC consideration of the OSFM Chapter 7A, if amended.

In conclusion, HCD greatly respects the OAL rules regarding prospective incorporation by reference and validity of future modifications in most circumstances. In the instant situation, however, the rationale does not apply. Not only have the standards been vetted by the construction industry, and not only may the commenters comment again regarding what HCD has chosen to incorporate or not incorporate in the MH/WUI regulations, but, in the future, the MH and CM industry has the right to, and may merely request to, participate in the development and adoption of future WUI regulations before they become effective for conventional as well as manufactured housing.

In addition, HCD does not believe that its adoption of Chapter 7A of the California Building Code, Title 24, Part 2, of CCR violations Sec. 20(c)(5) of Title 1, CCR. HCD does not believe that it is adopting a “document” (such as a form, study, etc.) but instead is adopting the standards in another California regulation. If this interpretation were carried to its full extent, every time an agency regulation cross-referenced even one of its own regulations such as an internal definition, (even in the same package being adopted), it would have to add a date of adoption to that internally cross-referenced regulation. (e.g., “This section is applicable to “mobilehome” as defined by section 1111 of this title, as *adopted July 1, 2006.*”) We believe that the term, “document”, as used in Sec. 20 can be distinguished from “regulation”.

► **Section 4206. Sale, Rent or Lease of a Manufactured Home, Mobilehome, Multifamily Manufactured Home, or Commercial Modular.** Within Article 2.3, HCD is proposing a section that makes it unlawful to sell a structure either intended to be installed in a WUI area that is not provided with ignition resistant construction or does not comply with this article, or modify a manufactured structure’s existing ignition resistant system unless that work is in compliance with provisions of the HCD WUI standards.

**Subsection (a).** By the addition of this subsection, a code user will know that it is unlawful to sell a structure intended to be installed in a WUI fire area unless the structure’s exterior complies with the requirements of this Article. This is necessary to ensure that these life- and property-saving provisions are properly implemented.

**Subsection (b).** By the addition of this subsection, a code user will know that any modifications, repairs or alterations to an existing ignition resistant system without

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complying with the requirements of this Article are unlawful acts. This is necessary to ensure that consumers who rely on the existence of a conforming exterior fire resistant covering can continue to rely on that when alterations are made.

► **Section 4208. Requirements for the Approval of the Plans for Ignition Resistant Construction System – Design Approval.** Within Article 2.3, HCD is proposing a section governing the approval of designs for the ignition resistant construction systems on certain structures in a factory setting, and intended for installation in WUI areas. This section describes how designs are approved, by both manufactured home manufacturers that principally operate under federal (U.S. Department of Housing and Urban Development, or HUD) authority and by multifamily manufactured home and commercial modular manufacturers that operate under HCD authority.

**Subsection (a).** By the addition of this subsection, a code user will know that manufactured home manufacturers must use existing HUD-certified design approval agencies and HUD procedures for the approval of ignition resistant construction system designs for manufactured homes intended to be installed in a WUI area in accordance with existing federal regulations. A Primary Inspection Agency (PIA) is a term used by HUD for HUD-certified design and inspection approval agencies that are employed by manufacturers of manufactured homes. Use of the PIA and the existing federal process for design review will reduce the burden on manufacturers, since they already are involved in design review of other components of the manufactured homes. Requiring the review to include in-factory and installation site specifications and procedures is necessary because site installation can create or preserve fire intrusion areas (e.g., at the base of the unit) or because many manufactured homes are delivered in multiple sections that are assembled on-site and must be properly sealed.

**Subsection (b).** By the addition of this subsection, a code user will know that manufacturers of new multifamily manufactured home and commercial modular structures are under ITCD authority, as opposed to the subsection (a) manufactured home that are under HUD authority, therefore they will be subject to the following subsections (b)(1), (2) and (3) for design approval of ignition resistant construction system designs for such structures intended to be installed within a WUI area. Different requirements are necessary for these types of newly-constructed structures because, by definition, they are not subject to the HUD code. “Mobilehome” structures are not included in this subsection because, by definition, they are structures built prior to June 15, 1976, (see H&SC Section 18008) and, therefore their ignition resistant construction system always is added outside a factory (see proposed Section 4212 below).

**Subsection (b)(1).** By the addition of this subsection, a code user will know that multifamily manufactured home and commercial modular manufacturers must utilize an HCD-certified design approval agency for design review and approval of ignition resistant construction system designs for such structures intended to be installed within a WUI area. This is the same design approval system currently used for these structures, and therefore reduces the burden on the manufacturer.

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**Subsection (b)(2).** By the addition of this subsection, a code user will know that the manufacturer's design approval agency must provide copies of the designs to the manufacturer for construction and installation of the construction system, clarifying procedures so that approved plans are provided to the manufacturer prior to construction. This section imposes requirements similar to those for design approval agencies provided in section 4876(c) of 25CCR, Division 1, Chapter 3, Subchapter 2, Article 5 for the balance of the design of these units. This increases efficiency, reduces manufacturers' costs, and ensures that the design of the ignition resistant construction system is compatible within the design of the unit itself.

**Subsection (b)(3).** By the addition of this subsection, a code user will know that only DAA approved plans may be used for ignition resistant construction system construction. This eliminates confusion and the possibility of a manufacturer using unapproved "in-house" or "shop" drawings for such construction, and enhances consumer safety.

► **Section 4210. Requirements for the Inspection Approval of an Ignition Resistant Construction System Within a Factory.** Within Article 2.3, HCD is proposing a section for inspection approval of the construction of ignition resistant construction on manufactured structures constructed within a factory and intended for installation in WUI areas. This section describes the different procedures for inspection approval for such construction of manufactured homes constructed under HUD authority and for inspection approval for construction of multifamily manufactured homes and commercial modular structures under HCD authority.

**Subsection (a).** This subsection makes clear that it applies only to manufactured homes.

**Subsection (a)(1).** By the addition of this subsection a code user will know that manufactured home manufacturers must inspect and obtain inspection approval of the construction of ignition resistant construction systems using their existing HUD inspection agencies and using procedures imposed by HUD in 24 CFR Part 3282, Subpart E, "Manufacturer Inspection and Certification Requirements." This is necessary to reduce the burden on manufacturers and to coordinate inspections of the fire resistive construction system within the balance of the structure.

**Subsection (a)(2).** By the addition of this subsection, a code user will know that manufacturers must certify that the installation of the ignition resistant construction system complies with the requirements of this article and its approved designs, pursuant to the certification label requirements of section 4214 of 25CCR, Article 2.3 (Proposed new section). This is necessary because the manufacturer has the ultimate responsibility to ensure that the system is installed correctly, either initially or in response to corrections identified by the inspector. This section fulfills the Chapter 7A, section 701A.3.2.2 intent to certify that such construction complies. Also, the manufacturer already has to certify to other compliance under the HUD standards.

**Subsection (b).** By the addition of this subsection, a code user will know how

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inspection approval is obtained for construction of multifamily manufactured homes and commercial modular structures, using HCD (not HUD) approved third-party agencies. These requirements are consistent with and enhance the existing inspection procedures established for these structures as provided in section 4878, and clarify that this new article also requires manufacturers to certify that the procedures are consistent with the certification label requirements of section 4214.

**Subsection (b)(1).** By the addition of this subsection, a code user will know that a manufacturer must use its existing HCD-certified quality assurance agency (QAA) to obtain inspection approval of the construction of ignition resistant construction systems. This amendment clarifies and enhances existing procedures for other parts of the units established in section 4878 of 25CCR.

**Subsection (b)(2).** By the addition of this subsection, a code user will know that manufacturers must certify compliance of the ignition resistant construction, and document that certification so HCD may monitor and enforce this article. Certification labels demonstrate to state and local enforcement agencies that, by placement of the label on complying fire resistive structures, the exterior materials comply with the provisions of this article. This is necessary because the manufacturer has the ultimate responsibility to ensure that the system is installed correctly, either initially or in response to corrections identified by the inspector. Also, the manufacturer already has to certify to other compliance under the HCD standards.

**Subsection (c).** By the addition of this subsection, a code user and enforcement agency will know that manufacturers demonstrate compliance with CBC Part 2, Chapter 7A, section 701A.3.2.2, by providing a signed copy of the ignition resistant construction system certification label to the local enforcement agency at the time a permit to install the structure occurs. Certification of this type provides assurances to the local enforcement agency of compliance with Chapter 7A construction design and materials which the local agency was not able to verify during the manufacturing process in a factory or at other off-site locations and which no longer can be verified because walls are closed up.

**Subsection (d).** By the addition of this subsection, the code user will know that all manufacturers must provide a copy of the certification label to HCD monthly, for all structures constructed with ignition resistant construction systems during the previous month. This amendment provides HCD with notification that such construction was provided and documentation of its location for HCD monitoring and follow up purposes. Requiring submittal by the fifteenth day of each month mirrors existing reporting requirements that are provided in section 4880 of 25CCR, and allows time to collect and send the information.

► **Section 4212. Requirements for the Installation of an Ignition Resistant Construction System to Structures not in a Factory.** Within Article 2.3 HCD is proposing a new section addressing the installation of an ignition resistant construction system on manufactured structures that no longer are in a factory. These procedures

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differ from the previous sections due to HCD's preemptive inspection authority provided by HSC 18029 for the approval of alterations to manufactured structures in the possession of owners, dealers, owner-builders, or contractors in any off-site, non-factory location if those structures will be installed or reinstalled in a WUI area.

**Subsections (a-b-c).** By the addition of these subsections, the code user will know that persons altering these structures must first obtain approval by submitting forms, fees and (2) sets of plans to HCD for HCD review of the design of the alteration or modification. The code user also learns that HCD personnel are required to approve designs and inspect the installation of ignition resistant construction system alterations or modifications to existing structures. The requests for design and inspection approval must be requested using an application form provided by HCD. These procedures are used because they ensure proper design and because they are the same as those currently used for other alterations of these structures, making the process easier for consumers, contractors, and department staff.

**Subsection (d).** By the addition of this subsection, a code user will know that HCD will provide a copy of the final inspection approval of the ignition resistant construction system to the applicant requesting inspection. This written inspection approval is necessary to demonstrate compliance to the local enforcement agency having jurisdiction in the fire hazard area, prior to installation of the structure and to satisfy the requirements of Chapter 7A, section 701A.3.2.2.

**Subsection (e).** By the addition of this subsection, a code user will know that in order to verify that the ignition resistant materials and products used during construction of an ignition resistant construction system meet the requirements of Chapter 7A, the packaging and installation instructions provided by the product manufacturer are maintained for review. This amendment mirrors similar requirements referenced in Chapter 7A, section 701A.1 and Chapter 15, section 1507.2 of 24CCR, Part 2, CBC. Packaging and installation instructions provide inspectors with essential information helping to identify product listing compliance and verification of product installation. Without this identification, inspectors may require removal of roofing, walls or other surfaces in order to verify product stamps, labels or certification markings adhered to the material underside or backside.

► **Section 4214.** Within Article 2.3, HCD is proposing a new section addressing contents, materials, and procedures for an ignition resistant certification label that is completed and affixed to the structure by the manufacturer or installer. A signed certification label demonstrates compliance by the manufacturer or installer that the ignition resistant construction system complies with Article 2.3. The label also provides information on the type of ignition resistant materials used by the installer or manufacturer, should these materials require verification, maintenance or replacement by the structure's owner.

**Subsection (a).** By the addition of this subsection, the code user will know that a certification label is required to be provided and affixed on each structure having an ignition resistant construction system installed. A certification label will provide valuable

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information for the owner or future owner should a need arise to repair or replace any of the special fire resistive materials installed on the exterior; to the enforcement agency as a verification that the materials are of the correct type and that they are installed and inspected as provided in this article; and for HCD complaint handling, monitoring, enforcement, and statistical use.

**Subsections (a)(1-2-3-4-5-6).** By the addition of these subsections, the code user will know that the certification label must be a certain format and size, and be permanently protected and secured within the structure. Information on the label provides information not only necessary during construction and installation, but for future use by the owner(s) should modifications or alterations be necessary. The information will be available for easy inspection for the life of the unit because of the prescribed materials and procedures.

**Subsection (b).** By the addition of this subsection, the code user will know that the certification label must closely follow the example provided by HCD following this subsection. Wording provided on the label restates requirements contained within Article 2.3 in a manner that the structure's owner, manufacturer, installer, and enforcing agency can understand.

The name, address of the installer/manufacturer, design and inspection approval agency; the structure's serial number, and the date of installation is information valuable to HCD should HCD monitor finished construction or receive complaint that the construction or materials used may not comply with the regulations.

The instructions provide critical material and information. The prohibition against removal or covering the certification ensure that it always can be found and used as a reference by a homeowner, enforcement agency, or future contractor. The reference to Article 2.3 and chapter 7A provide guidance for material, installation, and inspection requirements.

The prohibition related to alterations summarizes Article 2.3 requirements to ensure that alterations are properly performed, including proper materials, methods, permits and inspections. The limitation for those making alterations or repairs to B (general) or C-47 (manufactured housing) contractor licenses follows current standards for work on manufactured structures and promotes correct work.

The warning that additions of garages and other exterior features may adversely affect the ignition resistant system is a reminder that the system seals the home from embers and fires, and that altering or adding exterior features "breaks" the seal. A source of information is provided so that consumers, manufacturers and installers will not mistakenly seek assistance from local agencies whose work involves conventionally-constructed homes, rather than the preemptive state regulations.

The signature, name, date, and location of signature provide a resource for the consumer, a paper trail for HCD and local enforcement agencies, and a reminder to manufacturers and/or installers of their responsibility under this Article.

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The lower sections of the label that require installer to provide the type of exterior siding, doors, windows, and roofing materials used in the construction is necessary for HCD monitoring purposes and is also valuable to the structure's owner should any repairs or modifications be made to the exterior.

► **Section 4216. Maintenance, Repairs and Alterations, Material Identification.**

Within Article 2.3, HCD is proposing a new section addressing the requirements for alteration, repair or replacement of an existing ignition resistant construction system.

**Subsection (a).** By the addition of this subsection, a code user and enforcing agency will know the requirements for alteration, repair, or replacement in kind of the ignition resistant construction system must be in accordance with Article 2.3. This subsection reinforces the need for such construction to continue to be effective over the life of structures installed within a fire hazard severity zone, protecting property and providing life safety.

**Subsections (b)(1-2-3).** By the addition of this subsection, a code user and enforcing agency will know how HCD defines an alteration of an ignition resistant construction system requiring permit approval, as opposed to maintenance or repair. This is necessary to ensure that proper standards are applied and proper permits are obtained.

**Subsection (c).** This subsection requires that work on a manufactured unit's exterior fire resistant system be performed by a B (general) or C-47 (manufactured home specialty) licensee of CSLB. These licensees are expected by virtue of their license to have the unique knowledge of how to perform work on manufactured housing.

**Subsection (d).** By the addition of this subsection, a code user and enforcement agency will know that alterations to existing ignition resistant construction systems require HCD plan and inspection approval involving specific procedures.

**Subsection (d)(1).** By the addition of this subsection, the code user and enforcement agency will know that the plan review and inspection approval process of ignition resistant construction alterations include submission of a specified HCD form and payment of fees, which are procedures similar to electrical, mechanical, plumbing, or structural alterations of manufactured structures as required by HSC 18029. This is necessary to establish a specific permit review process.

**Subsection (d)(2).** By the addition of this subsection, the code user will know that the person(s) altering the ignition resistant construction system must obtain and pass inspection, which is the same as is required for fire safety, electrical, mechanical, plumbing, and structural alterations for other manufactured structures as required by HSC 18029. This is necessary to promote workmanlike repairs or alterations and health and safety.

**Subsection (d)(3).** By the addition of this subsection, a code user will know that in order to verify that the ignition resistant materials and products used during construction

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of an ignition resistant construction system meet the requirements of Chapter 7A, the original packaging and installation instructions provided by the product manufacturer must be maintained for review. This amendment mirrors similar requirements referenced in Chapter 7A, section 701A.1 and Chapter 15, section 1507.2 or 24CCR, Part 2, CBC. Original packaging and installation instructions provide inspectors with essential information helping to identify product listing compliance and verification of product installation. Without such identification, inspectors may require the removal of walls or materials in order to verify product stamps, labels or certification markings adhered to the material underside or backside.

### **POLICY STATEMENT OVERVIEW**

The Manufactured Housing Programs within HCD is responsible for adopting and enforcing preemptive state regulations for the construction, alteration, conversion, sale, rent or lease of manufactured homes, mobilehomes, multifamily manufactured homes, commercial modulars and special purpose commercial modulars within California. HCD's mission includes promoting both safety and affordability of housing and related structures in California.

HCD is proposing to amend regulations relating to the Manufactured Housing Act of 1980, sections 18000 through 18153.

### **SMALL BUSINESS IMPACT STATEMENT**

Small businesses will be affected by these regulations. (See "Cost Impact on Representative Private Person or Business" paragraph, below.)

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Significant effect on housing costs: NONE.

### **BUSINESS IMPACTS**

HCD has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. However, there exists the need to adopt these regulations to alleviate a potential adverse economic impact on business, should businesses manufacture structures for use in California without a consistent set of requirements applicable statewide.

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### **COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

There will be some small cost impact to manufacturers of new manufactured homes, multifamily manufactured homes and commercial modular structures in the form of cost associated with specific materials and installations necessary to comply with ignition resistant construction. Since all structures are not required to comply with these proposed regulations, but only structures installed in locations subject to severe fire hazards associated costs are small. Owners of existing manufactured homes, mobilehomes, multifamily manufactured homes or commercial modular structures, also will have some minor cost impact when intending to install their structure in a Fire Hazard Severity Zone as the structure will be required to be constructed to resist fire and fire embers. Permit and inspection would be required. It should be noted that these costs are the same or slightly less than the costs attributable to new home construction or home alterations in the same fire hazard areas. Thus, it is the geographic location of the structure, not these regulations, which triggers the added costs.

The increased costs of the ignition resistant construction system are likely to be partially offset over time by reduced annual fire insurance costs as well as reduced likelihood of catastrophic damage, destruction, or personal injuries in the event of a wildland fire.

HCD is not aware of any other cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments serve to improve fire resistive construction to help ensure the occupants and structures survive a wildfire.

### **ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION**

HCD has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

### **CONSIDERATION OF ALTERNATIVES**

Throughout the development of this proposed emergency rulemaking, HCD must determine that no alternative will be more effective in carrying out the purpose for which the action is proposed or that no alternative will be as effective as and less burdensome to affected private persons than the proposed action.

During the development of this proposal, the following alternative was determined not to be acceptable and was rejected:

- Performance-Based Requirements for Ignition Resistant Construction Systems  
Performance based standards, while worthy of consideration, were found not to be acceptable because they may not be equivalent to the prescriptive requirements provided in Chapter 7A, causing resistance from local building, planning and fire marshal offices, and, as such, do not meet the objective of providing uniform standards.
- Not Establishing Preemptive Statewide Standards

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Not establishing preemptive statewide standards and leaving standards to local jurisdictions, would have significant cost impacts on manufacturers and consumers because of the disruption of the factory-line production system and because unnecessarily rigorous standards could be imposed to provide extreme fire protection. This alternative did not meet the department standard of promoting both safe and affordable housing.

### **STUDIES, REPORTS, AND SIMILAR DOCUMENTS**

HCD has relied upon the following sources of information when developing the proposed regulations:

- ▶ California Code of Regulations, Title 24, Part 2, Chapter 7A, Materials And Construction Methods for Exterior Wildlife Exposure.
- ▶ California Department of Forestry and Fire Protection web site <http://www.fire.ca.gov/fire>. Frequently Asked Questions
- ▶ California Department of Forestry and Fire Protection web site <http://www.fire.ca.gov/fire>. Wildland-Urban Interface Building Codes
- ▶ Letter from William W. Matchneer III, Associate Deputy Assistant Secretary, and Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, to Richard Weinert, Codes and Standards Administrator II, Department of Housing and Community Development, Division of Codes and Standards, January 31, 2008.